

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAHAN KEMAL EPPS,

Defendant-Appellant.

UNPUBLISHED

October 3, 2006

No. 262287

Wayne Circuit Court

LC No. 04-007919-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for second-degree murder, MCL 750.317. Defendant was sentenced to 18 to 36 years' imprisonment for his second-degree murder conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is whether the trial court erred in finding his confession to be voluntary. Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law that this Court must determine de novo under the totality of the circumstances. *People v Snider*, 239 Mich App 393, 417, 608 NW2d 502 (2000). This Court will not reverse the trial court's findings regarding those circumstances unless they are clearly erroneous. *People v Manning*, 243 Mich App 615, 620; 624 NW2d 746 (2000). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that the trial court made a mistake. *Manning*, *supra* at 620.

Whether a statement was voluntary is determined by examining the conduct of the police. *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003). In determining voluntariness, this Court should consider all of the circumstances, including (1) the age of the accused, (2) his lack of education or his intelligence level, (3) the extent of his experience with the police, (4) the repeated and prolonged nature of the questioning, (5) the length of the detention of the accused before he gave the statement in question, (6) the lack of any advice to the accused of his constitutional rights, (7) whether there was any unnecessary delay in bringing him before a magistrate before he gave his confession, (8) whether the accused was injured, intoxicated, drugged, or in ill health when he gave the statement, (9) whether the accused was deprived of food, sleep, or medical attention, (10) whether the accused was physically abused, and (11) whether the suspect was threatened with abuse. *People v Tierney*, 266 Mich App 687, 708; 703 NW2d 204 (2005), quoting *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). No

single factor is determinative and the ultimate test of admissibility is whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made. *Tierney, supra* at 708. The absence or presence of any one of the factors is not necessarily conclusive on the issue of voluntariness. *Shiple, supra* at 374.

In this case, defendant was 31 years old when he spoke with the police. Nothing in the record of the hearing indicates defendant's educational or intelligence levels. Defendant was familiar with his rights from his prior arrest for assaulting his girlfriend on July 5, 2004. Defendant spent a number of hours with the police, including the time he was being driven to the police station. At least two police officers spent time questioning defendant. Defendant was advised of his rights and had an opportunity to review them. Defendant put his initials by each of the rights explained to him and signed the waiver form. Officer Simon testified that defendant did not appear to have any difficulty understanding his rights. Defendant was given breaks and offered food and drink during the questioning. Defendant does not argue that he was abused or threatened.

Defendant argues that Simon promised to reduce the charge against him to manslaughter and ensure that he got a lifetime probation sentence if he confessed. A promise of leniency is another factor to be considered in the evaluation of the voluntariness of a defendant's statements, but it is just one factor. *Shiple, supra* at 373. Simon, however, denies that any such promise was made. The trial court believed Simon. Deference is given to the trial court's assessment of credibility. *Tierney, supra* at 708.

Viewing the totality of the circumstance in this case, we conclude that defendant's confession was voluntarily. There was no police misconduct during the questioning and defendant was fully advised of his rights. He voluntarily chose to waive those rights and voluntarily chose to confess to the murder.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper